

**STATE OF NEW MEXICO'S RULE 71.3 REPORT – FY 2019**  
**LOWER RIO GRANDE ADJUDICATION BUREAU**  
 September 21, 2018

**Matters to Be Completed Prior to Preparation of Final Decree**  
 (Highlighting indicates the State's priorities for fiscal year 2019)

Total Bureau Staff FTE and Contractor Resources: ~~FY 2010 16.75~~  
~~FY 2011 13.85~~  
~~FY 2012 13.95~~  
~~FY 2013 15.05~~  
~~FY 2014 14.55~~  
~~FY 2015 14.45~~  
~~FY 2016 12.80~~  
~~FY 2017 13.55~~  
~~FY 2018 13.30~~  
 FY 2019 11.80

**I. LOWER RIO GRANDE ADJUDICATION**

(Total Staff & Contract Resources: ~~14.90~~ ~~12.20~~ ~~12.00~~ ~~13.05~~ ~~13.05~~ ~~14.30~~ ~~11.65~~ ~~12.80~~ ~~12.25~~ 10.55)

**A. General** (Staff & Contract Resources: ~~2.45~~ ~~2.85~~ ~~2.40~~ ~~2.60~~ ~~5.15~~ ~~4.15~~ ~~3.60~~ ~~2.65~~ ~~1.85~~, 1.35)

1. **Litigation of proposed or designated stream system/expedited *inter se* issues**

- a. ~~Stream System Issue No. 101 (irrigation water requirements for pecans and basin-wide for all other crops) Final Judgment entered August 22, 2011. Completed FY 2012~~
- b. ~~Stream System Issue No. 102 (EBID separate groundwater claim) Completed FY 2011~~
- c. ~~New Mexico Pecan Growers (joint motion to designate pecan irrigation water requirements as a stream system issue) Pecan Agreement subsumed by Final Judgment in SSI No. 101. Completed FY 2012~~
- d. ~~EBID Threshold Motion No. 1 (division of authority between Office of the State Engineer and EBID) Withdrawn FY 2010~~
- e. Stream System Issue No. 103 (domestic wells – manner of determining priority date and amount of water put to beneficial use) Schedule deferred.
- f. **Stream System Issue No. 104 (United States' interests in the Rio Grande Project)**, by sub-issue:
  - i. ~~sub-issue 1: Project source of water; Order granting State's motion to dismiss U.S. claims to groundwater entered August 16, 2012 Completed FY 2013~~
  - ii. **sub-issue 2: Project amount(s) and priority date(s); Order granting State's motion for summary judgment on amount of water entered February 17, 2014; trial on priority dates August 31–September 11, 2015; closing arguments September 1, 2016; Findings of Fact and Conclusions of Law entered April 17, 2017. Temporary stay of final order to allow settlement discussions entered July 7, 2017, stayed through September,**

2017; appeal anticipated, conditioned on outcome of settlement discussions.

- g. ~~Stream System Issue/Expedited *Inter Se* No. 105 (claims of the Estate of Nathan Boyd regarding legality of U.S. rights in the Rio Grande Project) Order granting motions to dismiss filed February 24, 2012; *aff'd Boyd Estate v. United States, Elephant Butte Irrigation district and City of Las Cruces*, 2015 NMCA 018, *cert. denied*, 2015 NMCERT \_\_\_, (No. 35,025, Jan. 14, 2015)). Completed FY 2015~~
  - h. ~~Proposed Steam System Issue (rights of pre-1906 claimants) Order denying the proposed stream system issue entered April 25, 2013; Ct. App. Memorandum Opinion dismissing appeal filed May 29, 2014.) Completed FY 2014~~
  - i. ~~United States, et al. v. Boyd, et al. (motion to intervene and lift the stay in federal quiet title case closed since 2002) 10<sup>th</sup> Circuit Court of Appeals affirmed district court denial of motion; mem. opinion filed December 7, 2015. Completed FY 2016~~
  - j. **Stream System Issue No. 107** (status of pre-Rio Grande Project surface water rights) Order designating issue filed July 6, 2016; Order striking James Scott Boyd's Notice of Intent to Participate entered February 2, 2017; **Notice of Appeal of Boyd Order** filed March 1, 2017 and waiting for calendar assignment; temporary stay to allow settlement discussions entered July 7, 2017; after two further stays next report on parties' settlement discussions and proposed new schedule due September, 2018.
  - k. **Pre-1906 Claimants Expedited *Inter Se*** (rights of select pre-1906 claimants with claims derivative of the Rio Grande Dam & Irrigation Company) ~~Order granting motion of State, U.S. and EBID to dismiss claims entered October 19, 2016. Notice of Appeal filed February 21, 2017 and waiting for calendar assignment.~~
  - l. Additional issues to be raised during course of adjudication
2. Negotiations with major parties
    - a. ~~United States (Rio Grande Project storage, release, and diversion rights) Negotiations terminated FY 2012; issues being litigated in SSI No. 104~~
    - b. ~~Southern Rio Grande Diversified Crop Association (irrigation water requirements) Negotiations terminated FY 2011; issues resolved under Final Judgment in SSI No. 101; Completed FY 2012~~
    - c. City of Las Cruces (majority of rights adjudicated; Jornada wells and assorted other rights remaining)
    - d. NMSU (majority of rights adjudicated; livestock rights on university ranch and irrigation rights on university farms remaining)
    - e. City of El Paso (irrigation rights)
  3. **Litigation and Mediation of other substantive issues**
    - a. **New Mexico Groundwater Association (motion to intervene)** Completed FY 2011
    - b. **Lion's Gate (motion to intervene; Court of Appeals upheld Order denying motion to intervene)** Completed FY 2010

- c. ~~Gonzales (Rincon subfile litigation; State prevailed on basis of forfeiture and abandonment; Court of Appeals affirmed April 28, 2013; Petition for writ of certiorari denied August 6, 2012) Completed FY 2013~~
- d. ~~Good Spring LLC (Outlying Area subfile litigation over extent of forage-irrigation and existence of surface water right used to create a wetland-habitat; settled after referral to special master for trial) Completed FY 2013~~
- e. ~~Baca (Rincon subfile litigation; claimant appellant prevailed in Court of Appeals October 24, 2012, on basis of sufficiency of evidence of historical-beneficial use; cause remanded to adjudication court for further proceedings on question of abandonment; Motion to reconsider Order rejecting abandonment denied March 4, 2014; Subfile Order signed July 28, 2014) Completed FY 2015~~
- f. ~~Sunnyside Properties (Southern Mesilla subfile litigation; trial March 25, 2013, before special master found commercial and irrigation water rights abandoned; hearing before adjudication court June 24, 2014, on claimant's objections to special master's report; Subfile Order reflecting abandonment entered September 14, 2014) Completed FY 2015~~
- g. ~~Cruces Equity (Southern Mesilla subfile litigation; settlement reached in mediation June 3, 2014; Stipulated Subfile Order filed August 12, 2014) Completed FY 2015~~
- h. Numerous parties (motions to vacate subfile orders for surface water-only rights to add claimed groundwater rights) State's proposed new *pro se* motion form adopted by the Court April 2017. Motions of four claimants, Jessica R. Camunez, Arthur A. Banegas, Rachel G. Banegas, and Arlene B. Waskiewicz Revocable Trust, set for argument at August 2017 status conference; motions granted and new offers have been sent out.
- i. ~~Whitaker (Southern Mesilla subfile litigation; dispute over acreage, priority dates, amounts) Trial scheduling order filed July 12, 2016; order of default entered January 11, 2017. Completed FY 2017~~
- j. ~~Pando (Northern Mesilla subfile litigation; dispute over no right) Unsuccessful mediation July 12, 2016; scheduling conference set for September 30, 2016; order of default entered November 22, 2016. Completed FY 2017~~
- k. ~~AA Chile (Rincon subfile litigation; dispute over abandonment) Unsuccessful mediation April 15, 2015; settled and subfile order entered May 4, 2017. Completed FY 2017~~
- l. ~~Duran (Northern Mesilla subfile litigation; dispute over no right) Scheduling conference set for September 30, 2016; order of default entered November 22, 2016. Completed FY 2017~~
- m. Lion's Gate (motion to lift stay and permit amicus curiae status to address SSI No. 104; taken under advisement by the Court)
- n. Buena Vista Dairy (Southern Mesilla subfile mediation; dispute over irrigation right connected to dairy operation); two inconclusive mediations—April 29, 2016 and May 4, 2017; settled; subfile order November 8, 2017; [Completed FY 2018](#)

- o. Additional issues to be litigated during course of adjudication
- 4. ~~EBID delivery and groundwater rights~~ Offer of Judgment withdrawn FY 2010 to allow litigation of certain of EBID's claims as stream system issues
- 5. ~~Implementation of agreement with EBID regarding adjudication of water rights on assessed lands~~ Completed FY 2010
- 6. ~~Creation and population of a database for processing claims to an FDR higher than 4.5 afay, as provided for under the Final Judgment in SSI No. 101~~ Completed FY 2014
- 7. ~~Development of definition for mature pecan orchards under agreement with New Mexico Pecan Growers~~ Definition completed FY 2011; issues resolved under Final Judgment in SSI No. 101; Completed FY 2012
- 8. ~~Development of basin wide irrigation water requirements for crops other than pecans~~ Completed FY 2010
- 9. ~~Determination of proper party to be served for water rights on leased government lands~~ Completed FY 2013
- 10. ~~Development of policies and procedures for evaluating evidence submitted by 600 water right owners to prove an FDR higher than 4.5 afay under the Final Judgment in SSI No. 101~~ Completed FY 2015
- 11. ~~Coordination with the Water Rights Allocation Program on implementation of the Settlement and Final Judgment in SSI No. 101~~ Completed FY 2015
- 12. Authentication of claims to historical groundwater use for claimants seeking to add groundwater component to their adjudicated and unadjudicated surface water rights, in conjunction with permitting applications to the District IV office
- 13. Incorporation into the adjudication of water rights established through permits issued subsequent to the hydrographic survey
- 14. ~~Development of procedures for global proceedings to add EBID assessed acreage to subfiles adjudicated prior to stipulated order on Threshold Motion No. Two; Procedural Order entered June 6, 2017.~~ Completed FY 2017
- 15. Application of procedures for adjudicating amount of water for adjudicated subfiles that subsequently prove higher FDR
- 16. Continuing proposals to the Court re adjudication procedures/status
- 17. Coordination with the Utton Center
- 18. Litigation of non-subfile motions (i.e., procedural and scheduling issues)
- 19. Stream system *inter se*
- 20. Final decree

**B. Nutt Hockett** (Staff Resources: 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00)  
 0.00) 43 subfiles—98% served, 98% adjudicated

- 1. Review of adjudicated subfiles on leased government lands
- 2. Reconciliation of maps and orders for *inter se*
- 3. Section *Inter se*
- 4. Partial final decree

C. **Rincon** (Staff & Contract Resources: 3.20 1.55 1.65 1.25 0.65 ~~0.90~~ 0.40 0.45 0.40 0.65)

1236 subfiles—96% served, 85% adjudicated

1. Primary subfile work
2. Global assessed acreage proceedings
3. River pumper claims
4. Federal proprietary claims
5. State proprietary claims
6. Mediation of disputed subfiles
7. Litigation of unresolved subfiles
8. Reconciliation of maps and orders for *inter se*
9. Section *inter se*
10. Partial final decree

D. **Northern Mesilla** (Staff & Contract Resources: .50 1.55 1.70 5.75 3.95 4.05 3.90 6.65 7.00 5.10)

5922 subfiles—57% served, 36% adjudicated

1. Primary subfile work, including analysis of FDR evidence
2. Revocation and revision of unaccepted offers of judgment sent prior to cessation of adjudication activity in the Northern Mesilla
3. Global assessed acreage proceedings
4. River pumper claims
5. Federal proprietary claims
6. State proprietary claims
7. Mediation of disputed subfiles
8. Litigation of unresolved subfiles
9. Reconciliation of maps and orders for *inter se*
10. Section *inter se*
11. Partial final decree

E. **Southern Mesilla** (Staff & Contract Resources: 7.50 4.70 4.30 1.30 0.65 4.05 1.90 2.50 2.45 2.35)

5478 subfiles—58% served, 43% adjudicated

1. Primary subfile work, including analysis of FDR evidence
2. Global assessed acreage proceedings
3. Federal proprietary claims
4. State proprietary claims
5. Mediation of disputed subfiles
6. Litigation of unresolved subfiles
7. Reconciliation of maps and orders for *inter se*
8. Section *inter se*
9. Partial final decree

**F. Outlying Areas** (Staff & Contract Resources: ~~1.25~~ ~~1.55~~ ~~1.95~~ ~~2.15~~ ~~2.65~~ ~~1.05~~ ~~1.85~~  
~~0.55~~ ~~0.55~~ 1.10)

1356 subfiles—83% served, 71% adjudicated

1. Primary subfile work
2. River pumper claims
3. Federal proprietary claims
4. State proprietary claims
5. Mediation of disputed subfiles
6. Litigation of unresolved subfiles
  - a. **Copper Flat Expedited *Inter Se*** (claims of New Mexico Copper Corp., et al.) Trial March 14-18 and June 27-July 1, 2016; post-trial briefs filed January 26, 2017; Findings of Fact and Conclusions of Law entered December 29, 2017. Subfile orders entered for claimants New Mexico Copper Corporation and Frost and Gray February 28, 2018; Notice of appeal filed by NMCC and Frost and Gray; cross appeals filed by Turner Ranch properties and Hillsboro parties; docketing statement filed by NMCC and Frost and Gray April 26, 2018; docketing statements filed by TRP and Hillsboro parties May 9, 2018; waiting on calendar assignment.
  - b. **Romero** (Outlying Area subfile litigation; dispute as to whether groundwater used for steam railroads was abandoned) Memorandum Order adopting the Special Master's finding of abandonment entered June 26, 2017. Final subfile order entered July 2017; appeal timely filed; placed on general calendar after filing of docketing statement. Brief in chief of appellant filed February 12, 2018; State's answer brief filed March 29, 2018; Reply brief filed April 18, 2018; waiting for setting on oral argument or decision.
  - c. **Faykus and Rio Vista** (Outlying Area subfile litigation; dispute over right to pump river water) Special Master's Report filed March 16, 2016 rejecting claim of pre-Water Code surface water rights; argument on Report before adjudication court August 31, 2016, defendant instructed to obtain new counsel by October 17, 2016; new counsel moved to set aside Special Master's Report and for reconsideration December 30, 2016; argument on motion April 17, 2017; motion to strike State's argument filed June 16, 2017; Court's Order accepting Special Master's Report and denying motion for reconsideration filed August 11, 2017; final subfile order entered September 29, 2017; notice of appeal filed October 27, 2017; claimant's brief in chief filed July 19, 2018; State's answer brief due September 25, 2018.
7. Reconciliation of previously adjudicated subfiles with EBID assessed acreage
8. Reconciliation of maps and orders for *inter se*

9. Section *inter se*
10. Partial final decree

## II. ANIMAS UNDERGROUND WATER BASIN ADJUDICATION

(Total Staff & Contract Resources: 1.85 1.65 1.95 2.00 1.50 0.25 1.15 0.75 1.05 1.25)  
150 subfiles—79% served, 46% adjudicated

- A. General** (Staff & Contract Resources: 0.10 0.10 0.10 0.15 0.20 0.01 0.15 0.15 0.25 .025)
1. ~~Litigation of basin-wide issue determining irrigation water requirements~~  
Completed July 2013
  2. ~~Status reporting to Court regarding hydrographic survey progress~~  
Completed FY 2014
  3. ~~Non-subfile general motion litigation~~  
Completed FY 2014
  4. Litigation of State's Motion to Exclude Domestic and Livestock Water Rights From the Adjudication; reply due July 28, 2017; argument August, 2017; Special Master's Report entered March 9, 2018, recommending that certain permitted domestic and livestock wells be excluded from the adjudication; order accepting that report expected shortly .
  5. Continuing coordination with Court regarding procedural and scheduling issues
  6. ~~Collaboration with the United States regarding identification of United States' Rights~~ Completed FY 2017
  7. Final decree
- B. Section 1 (Northern Area)** (Staff & Contract Resources: .00 0.00 0.70 0.70 0.35 0.02 0.25 0.15 0.20 0.25)
1. ~~Hydrographic Survey~~ Completed FY 2013
  2. Primary subfile work
  3. Expedited *inter se* and litigation of individual subfiles
- C. Section 2 (Cotton City)** (Staff & Contract Resources: 0.00 0.00 0.00 0.00 0.35 0.10 0.25 0.15 0.20 0.25)
1. ~~Hydrographic Survey~~ Completed FY 2014
  2. Primary subfile work
  3. Expedited *inter se* and litigation of individual subfiles
- D. Section 3 (Village of Animas)** (Staff & Contract Resources: 1.75 1.55 0.70 0.70 0.45 0.10 0.25 .015 0.20 0.25)
1. ~~Hydrographic Survey~~ Completed FY 2013
  2. Primary subfile work
  3. Expedited *inter se* and litigation of individual subfiles



E. **Section 4 (Southern Area)** (Staff & Contract Resources: 0.00 0.00 0.45 0.45 0.15 0.02 0.35 0.15 0.20 0.25)

1. ~~Hydrographic Survey~~ Completed FY 2013
2. **Primary subfile work**
3. **Expedited *inter se* and litigation of individual subfiles**

<i>Adjudication Section</i>	<i>Staff Atty</i>	<i>Contract Atty</i>	<i>Staff Para- legal</i>	<i>Contract Survey Staff</i>	<i>Survey Staff</i>		<i>Section Totals</i>
<b><i>Lower Rio Grande</i></b>							
<b><i>1. General</i></b>	<b>0.65</b>		<b>0.10</b>		<b>0.60</b>		<b>1.35</b>
<b><i>2. Rincon</i></b>	<b>0.20</b>		<b>0.10</b>		<b>0.35</b>		<b>0.65</b>
<b><i>3. Northern Mesilla</i></b>	<b>0.45</b>		<b>1.00</b>		<b>3.65</b>		<b>5.10</b>
<b><i>4. Southern Mesilla</i></b>	<b>0.45</b>		<b>0.40</b>		<b>1.50</b>		<b>2.35</b>
<b><i>5. Outlying Areas</i></b>	<b>0.70</b>		<b>0.05</b>		<b>0.35</b>		<b>1.10</b>
<b><i>Animas Underground Water Basin</i></b>	<b>0.10</b>	<b>0.20</b>			<b>0.95</b>		<b>1.25</b>
<b>Category Totals - All Sections</b>	<b>2.55</b>	<b>0.20</b>	<b>1.65</b>		<b>7.40</b>		<b>11.80</b>